U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 0 6 2015 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a "Direct Marketing Company" business with 107 employees. In order to employ the beneficiary in what it designates as a "Business Analyst" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserts that the director's basis for denial was erroneous and contends that it satisfied all evidentiary requirements.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, Notice of Appeal or Motion, and the petitioner's submissions on appeal.

I. STANDARD OF REVIEW

In the exercise of our administrative review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

> Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.
>
> * * *
>
> The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.
>
> * * *

> Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.
>
> Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id. at 375-76.

We conduct our review of service center decisions on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145. In doing so, as noted above, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe.* Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support the petitioner's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's grounds for denial were correct. Upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that its claims are "more likely than not" or "probably" true.

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires:

> (A) theoretical and practical application of a body of highly specialized knowledge, and
>
> (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

> *Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

> *(1)* A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
>
> *(2)* The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
>
> *(3)* The employer normally requires a degree or its equivalent for the position; or
>
> *(4)* The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the

term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

III. EVIDENCE

The petitioner submitted a letter of support dated March 27, 2014, stating that the company is "the leading provider of outsourced, face-to-face sales teams to a diverse client [base] of companies in a range of industries, including telecommunications, office products, retail, energy and financial services." It claimed to require the services of the beneficiary in the position of business analyst, claiming that he will be responsible for "maximizing sales payout results." The petitioner described the beneficiary's proposed duties as follows:

- Identifies and analyzes key sales performance metrics;
- Develops a sound plan, and effectively communicates, implements, and monitors plan to stakeholders;
- Creates weekly Department and Campaign sales performance reports used by Leaders in order to effectively drive results for the Client, Sales Offices, and [the petitioner];
- Reviews and coordinates all data sources from the external sales team and the client, integrates the data into the internal software systems and reports sales numbers and results to the stakeholders;
- Responsible for project management and process management;
- Creates and analyzes reports to determine key areas for process improvement and where the training group should focus;

- Supports collaborative solutions that resolve issues from daily challenge of the rapidly changing business climate, including working under tight, multiples deadlines; and,
- Daily/weekly/monthly monitoring and exception reporting and escalation if necessary of the following areas: process inputs (client sales data, client payment data), throughputs (Merlin matching logic and accuracy); and outputs (actual payments and billings).

The petitioner also claimed that it required the incumbent to have at least a bachelor's degree in Business, Finance, or a closely related field. It claimed that the beneficiary was qualified to perform the duties of the proffered position based on his master's degree in business administration from as well as his bachelor's degree in business administration from the The petitioner submitted copies of the beneficiary's diplomas and transcripts in support of this contention.

The petitioner also submitted a Labor Condition Application (LCA) to support the visa petition, indicating that the title of the proffered position is "Business Analyst," and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2051, Financial Analysts, from O*NET. The LCA states that the proffered position is a Level I, entry-level, position.

On May 19, 2014, the service center issued an RFE in this matter. The service center requested, among other things, evidence that the petitioner would employ the beneficiary in a specialty occupation, and provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements. In addition, the service center requested clarification regarding the classification of the proffered position as set forth in the LCA, noting that the position as described did not appear to correspond with the occupational classification selected in the LCA. Specifically, the director noted that, although the proffered position was classified under the "Financial Analysts" category, it appears from the description of duties contained in the record that the petition was more akin to that of a management analyst.

In response to the RFE, the petitioner submitted the following: (1) a letter dated August 8, 2014 addressing the issues raised by the director; (2) a copy of the petitioner's website to demonstrate a representative sample of the petitioner's work product; (3) a list of all employees currently holding the position of business analyst; (4) an excerpt from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (*Handbook*) pertaining to the Financial Analysts occupational group; (5) an excerpt from O*Net Online, summarizing the Financial Analysts occupational group; (6) the petitioner's job announcement for the proffered position; (7) a letter from Attorney at Law, submitted for consideration as an expert opinion; (8) job postings for positions within the industry that the petitioner deemed similar to the proffered position; and (9) a copy of a January 11, 2006 USCIS memorandum authored by Michael Aytes (hereinafter "the Aytes memo").

In its August 8, 2014 RFE response, the petitioner also restated the previous duties associated with the proffered position. The petitioner also provided breakdowns of the duties in terms of the

percentage of time the beneficiary would devote to these duties. Specifically, the petitioner provided the following additional details:

- Act as a consultant to business and technical stakeholders – 20%
- Integral to decisions impacted by technology – 5%
- Collaborate with IT and Business Team – 10%
- Collect business requirements into documentation and design – 8%
- Establish collaborate relationships – 30%
- Collect business requirements and ensure intent is well understood – 10%
- Provide thought leadership – 15%
- Communicate requirements to IT team so solutions may be designed – 2%

The petitioner also provided the following chart:

30.96%	Sales Analytics
28.02%	Processing Payments
11.88%	Creating Reports
7.72%	Process Negotiating/Strategizing
5.99%	Data and/or Process Analysis
3.96%	Process Creation and Problem Solving
3.86%	Gathering and/or analyzing feedback
2.44%	Coaching/Setting Expectations/Defining/Re-defining goals
1.93%	Creating/Drafting/Designing Procedures/policies
1.73%	Summarizing/Reporting Findings/Providing Recommendations
1.52%	Communicating accountability to ICLs

The petitioner contended that the duties of the proffered position were akin to those of a financial analyst, and also concluded that the beneficiary possessed the requisite educational credentials to perform the duties of a financial analyst.

The director denied the petition on August 29, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty, or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In addition, the director noted discrepancies in the petitioner's claims, noting that its claim that the proffered position corresponded with the Financial Analysts occupational classification appeared at odds with the description of duties associated with the proffered position.

On appeal, the petitioner contends that the director's decision was erroneous, and provides a brief in support of this contention. The petitioner maintains that the proffered position has clearly been established as falling within the occupational classification of Financial Analysts.

IV. ANALYSIS

As a preliminary matter, we note the petitioner's claim that the beneficiary holds degrees in "business administration," and that these educational credentials are a sufficient minimum requirement for entry into the proffered position.[1] A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).[2]

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business or business administration. This assertion is tantamount to an admission that the proffered position

[1] Specifically, we note that the petitioner claims throughout the record that it requires at least a degree in business, finance, or a related field for entry into the position of business analyst with its company.

[2] Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

> [t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: elsewise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*): A baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the particular position.

We recognize the *Handbook*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[3] The petitioner claims in the LCA that the proffered position is a business analyst and corresponds to SOC code and title 13-2051, Financial Analysts, from O*NET. The *Handbook* describes the occupation of "Financial Analysts" as follows:

> Financial analysts provide guidance to businesses and individuals making investment decisions. They assess the performance of stocks, bonds, and other types of investments.
>
> Duties
>
> - Financial analysts typically do the following:
> - Recommend individual investments and collections of investments, which are known as portfolios
> - Evaluate current and historical data
> - Study economic and business trends
> - Study a company's financial statements to determine its value
> - Meet with company officials to gain better insight into the company's prospects and management
> - Prepare written reports

[3] For additional information regarding the occupational category "Financial Analysts," *see* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Financial Analysts, on the Internet at http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm (last accessed March 24, 2015).

- Meet with investors to explain recommendations

Financial analysts evaluate investment opportunities. They work in banks, pension funds, mutual funds, securities firms, insurance companies, and other businesses. They are also called securities analysts and investment analysts.

Financial analysts can be divided into two categories: buy-side analysts and sell-side analysts.

- Buy-side analysts develop investment strategies for companies that have a lot of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments, such as some universities.

- Sell-side analysts advise financial services sales agents who sell stocks, bonds, and other investments.

Some analysts work for the business media and belong to neither the buy side nor the sell side.

Financial analysts generally focus on trends affecting a specific industry, geographical region, or type of product. For example, an analyst may focus on a subject area such as the energy industry, a world region such as Eastern Europe, or the foreign exchange market. They must understand how new regulations, policies, and political and economic trends may affect investments.

Investing is becoming more global, and some financial analysts specialize in a particular country or region. Companies want those financial analysts to understand the language, culture, business environment, and political conditions in the country or region that they cover.

The following are examples of types of financial analysts:

Portfolio managers supervise a team of analysts and select the mix of products, industries, and regions for their company's investment portfolio. These managers not only are responsible for the overall portfolio, but also are expected to explain investment decisions and strategies in meetings with investors.

Fund managers work exclusively with hedge funds or mutual funds. Both fund and portfolio managers frequently make split-second buy or sell decisions in reaction to quickly changing market conditions.

> ***Ratings analysts*** evaluate the ability of companies or governments to pay their debts, including bonds. On the basis of their evaluation, a management team rates the risk of a company or government not being able to repay its bonds.
>
> ***Risk analysts*** evaluate the risk in investment decisions and determine how to manage unpredictability and limit potential losses. This job is carried out by making investment decisions such as selecting dissimilar stocks or having a combination of stocks, bonds, and mutual funds in a portfolio.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Analysts," http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-2 (last accessed March 24, 2015).

Read in the total context of all of the information in the *Handbook* about the Financial Analysts occupational group, it is clear that the associated research, monitoring, analysis and other functions with regard to a business entity or entities does not refer to activities directed to the employer that is engaging the services of a financial analyst, but rather business entities that the employer firm is evaluating for potential investment. In this matter, however, the petitioner states that it is a "Direct Marketing Company" and claims on its website to be "the recognized leader in outsourced sales services." It is seeking the services of the beneficiary to "maximize[e] sales payout results." The duties of the proffered position do not encompass the traditional duties of a financial analyst as described above. The record does not indicate that the beneficiary will "assess the performance of stocks, bonds, and other types of investments" or "recommend individual investments and collections of investments, which are known as portfolios." The record does not establish that the beneficiary will perform the duties of a financial manager by serving as a portfolio manager, fund manager, ratings analyst or risk analyst. Finally, despite the petitioner's contentions to the contrary, there is no specific claim, or evidence to support a finding, that the proffered position is akin to this occupational classification.

Although the petitioner asserted in the LCA that the proffered position falls within the occupational category "Financial Analysts," we find that the evidence of record does not establish the proffered position as belonging within this occupational group. Nevertheless, we shall address why the evidence of record would not satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) even if the proffered is analyzed as a position within the Financial Analysts occupational group.

More specifically, the subchapter of the *Handbook* entitled "How to Become a Financial Analyst" states the following about this occupational category:

> Financial analysts typically must have a bachelor's degree, but a master's degree is often required for advanced positions.
>
> **Education**

Most positions require a bachelor's degree. A number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering. For advanced positions, employers often require a master's in business administration (MBA) or a master's degree in finance. Knowledge of options pricing, bond valuation, and risk management are important.

Licenses, Certifications, and Registrations

The Financial Industry Regulatory Authority (FINRA) is the main licensing organization for the securities industry. It requires licenses for many financial analyst positions. Most of the licenses require sponsorship by an employer, so companies do not expect individuals to have these licenses before starting a job. Certification is often recommended by employers and can improve the chances for advancement. An example is the Chartered Financial Analyst (CFA) certification from the CFA Institute, which financial analysts can get if they have a bachelor's degree, 4 years of experience, and pass three exams. Financial analysts can also become certified in their field of specialty.

Advancement

Financial analysts typically start by specializing in a specific investment field. As they gain experience, they can become portfolio managers, who supervise a team of analysts and select the mix of investments for the company's portfolio. They can also become fund managers, who manage large investment portfolios for individual investors. A master's degree in finance or business administration can improve an analyst's chances of advancing to one of these positions.

Important Qualities

Analytical skills. Financial analysts must process a range of information in finding profitable investments.
Communication skills. Financial analysts must explain their recommendations to clients in clear language that clients can easily understand.
Computer skills. Financial analysts must be adept at using software packages to analyze financial data, see trends, create portfolios, and make forecasts.
Decision making skills. Financial analysts must provide a recommendation to buy, hold, or sell a security. Fund managers must make split-second trading decisions.
Detail oriented. Financial analysts must pay attention to details when reviewing possible investments, as small issues may have large implications for the health of an investment.
Math skills. Financial analysts use mathematical skills when estimating the value of financial securities.

> To be successful, financial analysts must be motivated to seek out obscure information that may be important to the investment. Many work independently and must have self-confidence in their judgment.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, "Financial Analysts," available on the Internet at http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4 (last accessed March 24, 2015).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into this occupation. Although the *Handbook* states that most financial analysts typically need a bachelor's degree to enter the occupation, the *Handbook* does not indicate that such a degree must be *in a specific specialty*.[4] Rather, the narrative of the *Handbook* reports that "[a] number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering."

Thus, for the reasons discussed above, the *Handbook* does not support a claim that "Financial Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The director's decision noted that review of the job duties that the petitioner ascribed to the proffered position led to the finding that the proffered position "resembles that of a management analyst as defined by the [*Handbook*]." According to the *Handbook*, the occupation category of "Management Analysts" is described as follows:

> Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues.
>
> Duties
> Management analysts typically do the following:

[4] For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of financial analyst positions require at least a bachelor's degree, it could be said that "most" financial analyst positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports
- Develop solutions or alternative practices
- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

Although some management analysts work for the organization that they are analyzing, most work as consultants on a contractual basis.

Whether they are self-employed or part of a large consulting company, the work of a management analyst may vary from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the client organization's managers.

Management analysts often specialize in certain areas, such as inventory management or reorganizing corporate structures to eliminate duplicate and nonessential jobs. Some consultants specialize in a specific industry, such as healthcare or telecommunications. In government, management analysts usually specialize by type of agency.

Organizations hire consultants to develop strategies for entering and remaining competitive in the electronic marketplace.

Management analysts who work on contract may write proposals and bid for jobs. Typically, an organization that needs the help of a management analyst solicits proposals from a number of consultants and consulting companies that specialize in the needed work. Those who want the work must then submit a proposal by the deadline that explains how they will do the work, who will do the work, why they are the best consultants to do the work, what the schedule will be, and how much it will cost. The organization that needs the consultants then selects the proposal that best meets its needs and budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, "Management Analysts," available on the Internet at http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2 (last accessed March 24, 2015).

In this matter, we again note the petitioner's claim that the beneficiary will be primarily engaged in tasks such as "act[ing] as a consultant to business and technical stakeholders" and "establish[ing] collaborate relationships." The beneficiary will be tasked to creating reports, strategizing, and re-defining client goals as necessary based on the information and data available. It appears that the general tasks of a business analyst with the petitioning company are akin to, or at least highly similar to, the duties of a management analyst as described in the *Handbook*.

However, even if the proffered position had been classified under the Management Analysts occupational code, the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into this occupation. The *Handbook* states as follows:

> Most management analysts have at least a bachelor's degree. The Certified Management Consultant (CMC) designation may improve job prospects.
>
> Education
> A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA).
>
> Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English.
>
> Analysts also routinely attend conferences to stay up to date on current developments in their field.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, "Management Analysts," available on the Internet at http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4 (last accessed March 24, 2015).

The narrative of the *Handbook* reports that a number of fields of study provide appropriate preparation for this occupation, including business, political science and government, psychology, computer and information science, and English. The fact that a number of fields are suitable prerequisites for entry into this category demonstrates that a degree in a specific specialty is not required. Therefore, regardless of whether the position is classified within the financial analyst or management analyst categories, neither occupation requires at least a bachelor's degree in a specific specialty.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide

persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190).

We note the submission of a letter by Esquire, proffered as an expert opinion, who claims to have been an employment lawyer for approximately 30 years. However, we find Mr. assertions unpersuasive.

First, Mr. does not list the reference materials on which he relies as a basis for his conclusion. Although he claims to be "intimately familiar" with the petitioner's business because he has worked closely with the petitioner's management for approximately 20 years, no independent evidence to support this conclusion is provided.[5] Mr. simply draws a conclusion that the position of business analyst within the petitioner's organization is a specialty occupation that requires a bachelor's degree, yet fails to provide a factual and legal analysis as to how he reached such a conclusion as a person presenting himself as an "expert in the field of Employment Law" who has "an in-depth understanding of the position requirements at issue." Further, we find that Mr. claim that he has "provided opinions on such matters in the past that have been accepted as authoritative by dozens of [his] clients" is not a sufficient basis for us to defer to his opinion in this matter. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Moreover, Mr. finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in business, finance, mathematics, economics, or a related field. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a

[5] According to the statements on the Form I-129, the petitioner was established in 2012. Mr. claim that he has worked with the petitioner for close to 20 years, therefore, is questionable. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Therefore, we find that the letter from Mr. does not establish that the proffered position is a specialty occupation, and that the letter is not probative evidence toward satisfying any criterion at 8 C.F.R. § 214.2(h)(iii)(A).

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. For the reasons outlined above, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102.

In the instant case, the petitioner has not established that the proffered position would be within an occupational category for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position

are routinely required to have a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry into those positions.

We observe that, in order to address the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner would be obliged to provide evidence pertinent to organizations in the petitioner's industry. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty, or its equivalent, the petitioner would be obliged to demonstrate that parallel Level I, entry-level positions requiring only a basic understanding of the job requirements, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The petitioner submitted nine job vacancy announcements in support of the contention that a common degree requirement existed for parallel positions within the petitioner's industry. We find that the submissions fall short of satisfying this criterion.

The petitioner describes itself as a direct marketing company with 107 employees that was established in 2012. In the Form I-129 and on the LCA, the petitioner selected North American Industry Classification System (NAICS) Code 45439 for its industry, which corresponds to "Other Direct Selling Establishments."[6]

For the petitioner to establish that an organization is similar, it must demonstrate that it shares the same general characteristics with the advertising organization, which has been classified as a direct selling establishment. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Specifically, the petitioner submitted the following job-postings:

1. Business Analyst for an unidentified healthcare software company;
2. Business Analyst for a Fortune 25 healthcare company;
3. Business Data Analyst for a banking and financial services solutions company;

[6] *See* http://www.census.gov/econ/isp/sampler.php?naicscode=45439&naicslevel=5 (last accessed March 24, 2015).

4. Business Data Analyst for described as an "online hub for of online and offline real estate and neighborhood information;

5. Jr. Business Analyst for an integrated aluminum company;

6. Logistics Data and Business Analyst for a third-party logistics firm serving the healthcare industry;

7. Business Analyst for a healthcare business process management services provider;

8. Business Analyst for a staffing company/employment agency; and

9. IT Business Analyst for an independent film entertainment studio.

Preliminarily, we note none of these companies are engaged in the petitioner's industry, which we recall was classified as that of a direct marketing company/direct selling establishment. To the limited extent that the advertised and the proffered positions are described, there is an insufficient factual basis to conclude that the advertised positions are parallel to the one proffered here, or, for that matter, that the advertised positions are within organizations that are both in the petitioner's industry and similar to the petitioner, as would be required to establish relevance under this particular criterion.

Additionally, contrary to the purpose for which the advertisements were submitted, none of the postings submitted prior to adjudication and again on appeal establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. Consequently, even if the proffered position were deemed parallel in duties to the business analyst positions advertised, there is no indication that a bachelor's degree in a specific specialty is required for entry into these positions. Specifically, while all of the postings require a bachelor's degree, they either fail to mandate that the degree be in a specific specialty, or provide a wide array of fields in which such a degree could be held.

The job advertisements do not establish that organizations similar to the petitioner (i.e., similar direct marketing companies) routinely employ only individuals with degrees in a specific specialty, for parallel positions in the petitioner's industry.

Even if were to assume, for argument's sake, that the duty descriptions provided accurately describe positions parallel to the proffered position and in organizations similar to the petitioner and in its industry, the evidence of record would not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for such positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in

organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described, that are alleged to collectively constitute the proffered position, require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I business analyst, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the field. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty, or its equivalent, for the proffered position.[7]

The petitioner submits a list of seven employees, including the beneficiary, which it claims currently hold the position of business analyst. The list identifies the individuals by name, hire date, and salary, lists their respective degrees, and is accompanied by one payroll record for each individual. The record, however, contains no corroborating evidence of the nature of the employment of these individuals, or documentation such as their educational credentials to support the petitioner's claims, but simply claims that this list is representative of the petitioner's hiring practices. Therefore, the mere submission of this list of individuals without additional documentation does not establish that the petitioner routinely hires only specialty-degreed individuals for the proffered position as required by this criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Moreover, we note that, while not substantiated by the record, the list indicates that these individuals hold degrees in a variety of disparate fields, including political science, business, mathematics and psychology. Even if documentation to substantiate the attainment of these claimed degrees was submitted, this evidence does not establish that the petitioner routinely hires for the proffered position only persons holding a bachelor's or higher degree, or the equivalent, in a specific specialty closely related to the performance requirements of the proffered position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) requires a demonstration that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. The petitioner has not satisfied this criterion.

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

[7] While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties attributed to the proffered position contain no indication of a nature so specialized and complex that it requires knowledge usually associated with attainment of a bachelor's degree.

Further, as was noted above, the petitioner filed the instant visa petition for a position that the LCA submitted by the petitioner recognized as only a Level I prevailing-wage position, a position for a beginning level employee with only a basic understanding of business, financial and/or management analysis. This does not support the proposition that the nature of the specific duties attributed to the proffered position is so specialized and complex that their performance would usually be associated with the attainment of a minimum of a bachelor's degree in a specific specialty, or its equivalent, directly related to business analysis.

In other words, the proposed duties, even if they are assumed to have been accurately reported, have not been described with sufficient specificity to show that they are more specialized and complex than the duties of business analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The evidence of record does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

V. BEYOND THE DIRECTOR'S DECISION

Beyond the decision of the director, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the occupational classification for which the LCA was certified for use, that is, Financial Analysts. In this regard, we refer the petitioner back to this decision's previous comments and findings regarding the substantive discrepancies between the proposed duties presented in the petition, on the one hand, and the *Handbook's* information regarding the nature and general duties of positions within the Financial Analysts occupational group. As such, the petitioner was required to provide at the time of filing an LCA certified for SOC (ONET/OES) Code 13-1111 not 13-2051, in order for it to be found to correspond to the petition.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

> For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition*

> *is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit an LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

VI. CONCLUSION

An application or petition that does not comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd.* 345 F.3d 683; *see also BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.